

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 10, 2007

Opinion No. 07-102

Judicial Commissioners in Hamilton County Setting Bonds/Immunity

QUESTIONS

1. May the judicial commissioners in Hamilton County (established pursuant to chapter No. 192 of the Private Acts of 1996, and Tenn. Code Ann. § 40-1-111, as amended in 2004) set bonds for the appearance of individuals who are arrested and charged with violation(s) of state law or municipal ordinance(s) within the corporate limits of the various municipalities in Hamilton County?

2. Would said judicial commissioners have absolute judicial immunity for the acts they perform in setting those bonds?

OPINIONS

1. Yes. The judicial commissioners in Hamilton County may set bonds for the appearance of individuals who are arrested and charged with state law or municipal ordinance violations within the corporate limits of Hamilton County.

2. Yes. The setting of bonds by a judicial commissioner constitutes a judicial act that is entitled to absolute immunity.

ANALYSIS

Tenn. Code Ann. §40-1-111 permits the appointment of judicial commissioners in counties with certain populations. Chapter 192, §3 of the Private Acts of 1996 permits the Hamilton County legislative body to appoint judicial commissioners, despite the fact that Hamilton County's population does not fit within the delineated population brackets of Tenn. Code Ann. §40-1-111. *United States of America v. Malveaux*, 350 F.3d 555, 557 (E.D. Tenn. 2003). This private act expressly provides for the authority to set bonds.

Section 3(a) provides in pertinent part:

To assist the general sessions court, the county legislative body may appoint one (1) or more judicial commissioners. The duties of a judicial commissioner shall include, but not be limited to the following:

(4) Setting and approving bonds and the release on recognizance of defendants in accordance with Tenn. Code Ann., Title 40, Chapter 11.

1996 Private Acts, Chapter 192, §3(a)(4). *See* Tenn. Code Ann. §40-1-111(a)(1)(A)(iv). *See also* Tenn. Code Ann. §40-1-106 (Judicial commissioner is a “magistrate”).

Immunity claims must be analyzed in light of the functions performed by the person seeking immunity. *Burns v. Reed*, 500 U.S. 478, 486 (1991). To be entitled to immunity, the actions of the person seeking immunity must be closely related to the justifying purposes behind the particular immunity doctrine being invoked. *Nixon v. Fitzgerald*, 457 U.S. 731, 755 (1982).

Several varieties of immunity arise in the context of judicial proceedings. Judges are absolutely immune from suit for the acts performed in the exercise of their judicial functions. *Webb v. Fisher*, 109 Tenn. 701, 705, 72 S.W. 110, 111 (1903); *Mercer v. HCA Health Servs. of Tenn., Inc.*, 87 S.W.3d 500, 503-04 (Tenn.Ct.App.2002). Absolute judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993).

Over the years, a form of immunity similar to absolute judicial immunity has been extended to persons other than judges. The immunity, commonly referred to as quasi-judicial immunity, applies to persons who are not judges but whose functions are an integral part of or intimately related to the judicial process. These functions must be absolutely necessary to the proper functioning of the judicial process, *Mercer*, 87 S.W.3d at 504, and immunity for persons performing these functions arises only when the danger that they will be distracted from the performance of their duties is very great. *Forrester v. White*, 484 U.S. 219, 230 (1988).

In setting and approving bonds for the appearance of arrestees, a judicial commissioner performs a judicial act within his or her jurisdiction. *See State v. Bucy*, 1998 WL 855463, *2 (Tenn. Crim. App. 1998)(Magistrate’s decision to issue search warrant required exercise of judicial discretion and constitutes a judicial act)(copy attached). Because such an act is absolutely necessary to the proper functioning of the judicial process, it is the opinion of this Office that Hamilton County’s judicial commissioners would have absolute immunity for the acts they perform in setting those bonds.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

RENEE W. TURNER
Assistant Attorney General

Requested by:

Senator Ward Crutchfield
Legislative Plaza, Suite 13
Nashville, TN 37243-0210